

Miracle on Eagle Street

In the Christmas classic ‘Miracle on 34th Street,’ Judge Harper faces an uncomfortable dilemma: follow the law to an unjust conclusion, or find a reason to reject a clear legal rule and reach an outcome he knows is the correct one. On the big screen, Harper finds his reason. Yet a case is currently working its way through the New York Courts in which judges do not yet see sufficient reason to depart from the rule before them. The case is an application for a writ of habeas corpus in favour of an elephant named Happy; the stumbling block is precedent that the extension of legal personhood to nonhuman animals is unsuited for common law adjudication and should be deferred to the legislature.

This paper will argue that the facts accepted by the lower courts mean the present bench already have the legal reason they need to reject this rule. This will be demonstrated with reference to Radbruch’s belief that treating like cases alike is necessary for the overriding judicial goal of legal certainty, and rules that fail to do so should be rejected by the bench. This approach should be acceptable to both legal positivists and natural lawyers. Analogies will be drawn to decisions where judges have employed moral imperatives to fully recognize the legal personhood of individuals for whom this status was previously denied or held to be fractional. These examples of judges behaving in a way Radbruch would endorse will show that, for Happy, a Miracle on Eagle Street is not just morally desirable but legally necessary.



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Josh is a Lecturer in Law at Newcastle University. He works primarily in the field of contemporary natural law with a focus on ethical rationalism and the consequences of this approach for enquiry into the nature of legal normativity. On a more practical level he is interested in the concept of legal personhood and the extension of legal rights to nonhumans. His work on the latter has recently enabled him to take up visiting positions at the Max Planck Centre for Comparative Public Law and International Law in Heidelberg and at the Cambridge Centre for Animal Rights Law. He is also an active member of and local representative for Juris North, a legal and political philosophy discussion group based in the North of England.



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